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In re Patent No. 7,919,086	:
Issued: April 5, 2011	: DECISION ON PATENT TERM and
Application No. 10/583,795	: NOTICE OF INTENT TO ISSUE
Filed: June 21, 2006	: CERTIFICATE OF CORRECTION
Atty. Dkt. No.: 19672-003US1 RET/PCG-	:
9009	:

This is a decision on the application for patent term adjustment filed June 6, 2011 requesting that the patent term adjustment be increased from 235 days to 325 days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **GRANTED TO THE EXTENT INDICATED HEREIN.**

The above-identified application matured into U.S. Pat. No. 7,919,086 on April 5, 2011. The patent issued with a patent term adjustment of 235 days. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(d). Patentee contests the period of adjustment of 417 days accorded pursuant to 37 CFR 1.702(b) and assert that the correct period of adjustment under 37 CFR 1.702(b) is 555 days. Patentee further contests the reduction of 47 days assessed post allowance. Patentee further asserts that the patent term adjustment is subject to further reductions totaling 98 days pursuant to 37 CFR 1.704(c)(8).

With respect to the reduction of 47 days assessed post allowance, patentee is persuasive. A review of the record reveals that the February 18, 2011 was not a failure to engage in reasonable efforts to conclude prosecution or processing. Accordingly, the reduction of 47 days has been restored.

Patentee further asserts reductions totaling 98 days pursuant to 37 CFR 1.704(c)(8). A review of the record reveals that the correct reduction is 99 days in accordance with 37 CFR 1.704(c)(10). A Notice of Allowance was mailed on March 10, 2010. Patentees filed a Request for Continued Examination (RCE) and IDS on August 13, 2010. Prior to filing the RCE, applicant paid the Issue Fee. This set the calculation of the period of reduction pursuant to 37 CFR 1.704(b), if any, for applicant delay. The filing of the RCE and IDS after the mailing of the Notice of Allowance on March 10, 2010 constituted a failure to engage pursuant to 37 CFR 1.704(c)(10). This period is 99 days, counting the number of days in the period beginning on August 13, 2010 and ending on November 19, 2010, the date of mailing of the new Notice of Allowance in response. It is noted that the applicant delay accrued in connection with the IDS filed August 20, 2010 overlaps with the applicant reduction of 99 days under 37 CFR 1.704(c)(10) discussed herein.

Patentee's arguments that the period of adjustment pursuant to 37 CFR 1.702(b) is 555 days rather than 417 days have been carefully considered, but are not persuasive. The period of adjustment pursuant to 37 CFR 1.702(b) was properly calculated at 417 days.

35 USC 154(b)(1)(B) states in relevant part:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including — (i) any time consumed by continued examination of the application requested by the applicant under section 132(b).

37 CFR 1.702(b) states in relevant part:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including: (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b).

37 CFR 1.703(b) states in relevant part:

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods: (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Accordingly, in the instant matter, and in compliance with the provisions of law and rules set forth above, the period of adjustment under § 1.702(b) is 417 days, the period from August 13, 2010, the date that the RCE was filed, to April 5, 2011, the date that the patent issued, being excluded from the period of adjustment under 37 CFR 1.702(b).

In view thereof, at the time of issuance, the patent was entitled to an overall adjustment of 183 days (536 days under 37 CFR 1.702 – 353 days of applicant delay under 37 CFR 1.704).

Receipt is hereby acknowledged of the required \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 183 days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,919,086

DATED : April 5, 2011

DRAFT

INVENTOR(S) : Nakano, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 235 days

Delete the phrase "by 235 days" and insert -- by 183 days --